City of Lafayette Staff Report

For:	City Council
By:	Michael P. Cass, Planning Technician
Date Written:	March 28, 2008
Meeting Date:	April 14, 2008
Subject:	Agreement for Installation and Maintenance of Existing and New Landscaping between William J. and Margaret A. Schlinkert and the City of Lafayette, located at 3430 La Caminita, APN 230-040-011.

Introduction
The attached Agreement for Installation and Maintenance of Existing and New Landscaping between William J. and Margaret A. Schlinkert and the City of Lafayette was a condition of approval for HDP40-07. The attached agreement meets the requirement for approval.

Fiscal Impact
None

Recommendation
Accept Agreement for Installation and Maintenance of Existing and New Landscaping and authorize the City Clerk to accept and record.

Attachment(s)
A. Agreement for Installation and Maintenance of Existing and New Landscaping

11 D

Record at the request of City of Lafayette
Return to:
City of Lafayette
Attn: Michael P. Cass
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549

AGREEMENT FOR INSTALLATION AND MAINTENANCE OF EXISTING AND NEW LANDSCAPING

THIS AGREEMENT is made this _____ day of _____, _____, between William J. and Margaret A. Schlinkert hereafter referred to as "Property Owner," and the CITY OF LAFAYETTE, a Municipal Corporation, hereafter referred to as "City."

RECITALS

THIS AGREEMENT is based upon the following facts:

1. Property Owner is the owner of real property in the City of Lafayette, 3430 La Caminita, (Assessor's Parcel Number 230-040-011) described in Exhibit "A" attached to this Agreement and made a part of it by this reference;

2. On January 3, 2008, the City granted a Hillside Development Permit to the Property Owner in accordance with the zoning ordinance of the City of Lafayette.

3. By the terms of the Hillside Development Permit, the Property Owner is required to install and maintain landscaping in accordance with a plan approved by the City on January 3, 2008, a copy of which is on file in the City Office to which reference is made for further particulars;

4. Both parties recognize that the installation and maintenance of landscaping is an integral part of the Property Owner's plan for development of the property, and is necessary to carry out the purpose and intent of the City's Land Use regulations, and that the development would not have been approved by City without the assurance that this Agreement would be executed by Property Owner.

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES, as follows:

1. PURPOSE. The purpose of this Agreement is to assure (a) installation of the landscaping in accordance with landscape plan previously approved by the City and (b) continued maintenance and care of the existing landscaping.

2. PROPERTY SUBJECT TO AGREEMENT. The property which is the subject of this Agreement is described in Exhibit "A" which is attached to this Agreement and incorporated in it by this reference.

3. CITY PROCEEDINGS. Reference is made to the Planning Commission proceedings conducted by the City (Planning File No. HDP40-07) and the landscaping plan for the property, a copy of which is on file in the City Offices.

4. LANDSCAPING AS A BENEFIT. Property Owner agrees that the landscaping which he/she is obligated to provide will materially benefit his/her property and is necessary to comply with the 14 condition(s) imposed by the City as a requirement of the development of the property.

5. DUTY TO INSTALL AND MAINTAIN LANDSCAPING. Property Owner agrees to complete the installation of the approved landscaping prior to January 3, 2009, and diligently to maintain and care for the landscaping which he/she installs, using generally accepted methods of cultivation and watering. Property Owner shall maintain that standard care necessary to prevent the landscaping from deteriorating to the extent that its value as landscaping is destroyed.

6. CITY MAY MAINTAIN LANDSCAPING. Property Owner agrees that if he/she fails to meet the standard of maintenance necessary to keep the landscaping in a healthy condition, the City will give written notice of the deficiency to the owner who shall have 20 days to make the necessary correction, and if the correction is not made within 20 days the City may elect to take the steps necessary to assure that the landscaping is maintained and cared for. To do this, the City shall service a notice of its intent to enter the premises for this purpose. The City shall either personally serve the notice upon the Property Owner or mail a copy of it by Certified Mail at the Property Owner's last known address, or as shown on the tax rolls at least 15 days in advance of the date when it intends to enter the premises. For this purpose, the City may enter upon the property and perform such work as it considers reasonably necessary and proper to restore and maintain the landscaping. The City may act either through its own employees or through an independent contractor.

7. CITY'S COSTS OF MAINTENANCE A LIEN. If the City incurs costs in restoring or maintaining the landscaping after following the procedure set forth in Paragraph 6 above, the City shall make demand on the Property Owner for payment, if the Property Owner fails to pay the costs incurred by the City within 30 days of the date demand was made, the City may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 7 percent a year until paid.

8. ADDITIONAL REMEDIES. The City may as an alternative to the lien procedure set forth above in Paragraph 7, bring legal action to collect the sums due as the result of making of expenditures for restoration and maintenance of the landscaping. The Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, the Property Owner agrees to pay the City a reasonable sum as attorney's fees and court costs, together with interest from the date which is 30 days after the City has given its notice, under Paragraph 6 above.

9. NOTICES. Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed to the Planning Services Manager, City of Lafayette, 3675 Mt. Diablo Boulevard, Suite 210, Lafayette, CA 94549. Notices to the Property Owner shall be addressed to him/her at the following address:

William J. and Margaret A. Schlinkert
3430 La Caminita
Lafayette, CA 94549

When Property Owner ceases to be the owner, he/she may file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so, the subsequent Grantee is charged with the obligation under this Agreement.

10. MISCELLANEOUS TERMS AND PROVISIONS:
   (a) If any provision of this contract is adjusted invalid, the remaining provisions of it are not affected.
   (b) Notice to Property Owner shall be considered to have been given to him/her when sent to his/her address above stated.
   (c) This writing contains a full, final and exclusive statement of the contract of the parties.
   (d) Property Owner appoints the City as his/her Attorney-in-fact, to do all acts and things which the City considers necessary to restore or maintain the landscaping approved under the Planning Commission proceedings.
   (e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.
   (f) The obligations upon the owner signing this Agreement terminates personally as to him/her when he/she conveys his/her interest in the property and files for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner(s) takes title subject to the requirements of this agreement.

11. AGREEMENT ATTACHES TO LAND. This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

12. CITY MAY REQUIRE ADDITIONAL SECURITY. If upon execution of this Agreement or during the course of performance the City considers that it is necessary to have the Property Owner post additional security to guarantee the performance of his/her obligations, the City may require the Property Owner to post additional security. The City may require either a cash deposit or a surety bond guaranteeing performance, signed by sureties, and in a form deemed satisfactory to the City. The condition of the security shall be that if the Property Owner fails to perform his/her obligations under this Agreement, the City may in the case of a surety bond require the sureties to perform the obligations of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETE:

Mike Anderson Mayor, City of Lafayette

ATTEST:

Joanne Robbins City Clerk

PROPERTY OWNER(S):

William J. Schlinkert, Property Owner

Margaret A. Schlinkert, Property Owner

NOTE: Property Owner's signature(s) must be notarized on a separate notary sheet. Signatures must match letter-for-letter with printed name on this agreement.

ATTACHMENTS: Exhibit "A" Legal Description

PARCEL ONE:

Parcel "C", shown on the Record of Survey, M.S. No. 2-65, filed March 24, 1965, in Book 33 of Licensed Survey Maps, at page 33, Contra Costa County Records.

EXCEPTING THEREFROM: That portion thereof described in the deed from Herbert M. Sandford, et ux, to James F. Mitchell, et ux, recorded April 15, 1966, in Book 5100, Official Records, at page 564.

PARCEL TWO:

A right of way, not to be exclusive, as an appurtenance to Parcel One above and any subdivision or subdivisions thereof, for use as a roadway for vehicles of all kinds, pedestrians and animals, for water, gas, oil and sewer pipe lines, and for telephone, electric light and power lines, together with the necessary poles or conduits to carry said lines over, under and upon the following described property:

Portion of Lot 10, as designated on the map entitled "Plat of the Subdivision of a part of the Southern Portion of the Rancho Canada Del Hambre Y Las Bolsas, Surveyed April 10, 1869", which map was filed in the office of the Recorder of the County of Contra Costa, State of California, on April 15, 1869, in Book 17 of Maps, at page 7, described as follows:

Beginning at a point on the easterly line of that certain 98.00 acre, more or less, parcel of Serafino Rossi in Contra Costa County, said point being the most western corner of that certain 6.00 acre parcel as conveyed from Lawrence Ratto, et ux, to Serafino Rossi, dated February 11, 1924, recorded April 1, 1924, in Book 465 of Deeds, Page 217, said point being also the southwest corner of that certain 23.52 acre parcel as thirdly described in deed from San Ramon Valley Bank to Frank T. Kennedy, et al, dated March 10, 1924, recorded April 1, 1924 in Book 453 of Deeds, Page 493; and running thence along the northerly line of said 6.00 acre parcel and southerly line of said 23.52 acre parcel, north 58° 28' east, 477.64 feet to the center line of County Road B-16; thence along the center line of said County Road south 26° 58' east, 18.06 feet; thence leaving said County Road south 58° 28' west, 476.19 feet to the Westerly line of said 6.00 acre tract as above referred to and easterly line of said 98.00 acre parcel; and thence along this last said line north 31° 32' west, 18 feet to the point of beginning.

Being a strip of land of uniform width of 18 feet, excepting, however, the westerly 20.00 feet of the above mentioned County Road which lies within above described 18 foot strip.

PARCEL THREE:

Portion of Parcel "A", as shown on the Record of Survey, filed March 24, 1965 in Book 33 of Licensed Surveyor's Maps, Page 33, Contra Costa County Records, described as follows:

A non-exclusive right of way for sanitary sewer purposes and incidents thereto, over and under a strip of land 10 feet in width, the northeast line of which is parallel with and 10 feet northeasterly, measured at right angles, from the southwest line thereof, and which southwest line is described as follows:

Beginning at the most southerly corner of said Parcel "A"; thence from said point of beginning along a southwest line of said Parcel "A", as follows: North 31° 32' west, 54.08 feet; north 44° 44' west, 311.94 feet and north 56° 33' west, 418.19 feet.

Said strip is to be lengthened or shortened so as to terminate on the southeast by the southeast line of Parcel "A" above, and on the northwest by the direct northeasterly extension of a southeast line of Parcel "A" with a bearing and distance of north 29° 13' east, 110.95 feet.

PARCEL FOUR:

A non-exclusive right of way as an appurtenance to Parcel one hereinabove described for use as a roadway for vehicles of all kinds, pedestrians and animals and as a right of way for water, gas, oil and sewer pipe lines and for telephone,

electric light and power lines, together with the necessary poles or underground conduits to carry said lines, over, under and across Parcel Two, as described in the deed from Richmond-Martinez Abstract and Title Company, a corporation, to John L. Schmidt, dated May 15, 1944, recorded June 3, 1944, in Book 786 of Official Records, at page 106.

EXCEPTING FROM PARCEL FOUR: That portion thereof lying within Parcels One and Two above.

PARCEL FIVE:

A non-exclusive right of way an an appurtenance to Parcel One hereinabove described, for use as a roadway for vehicles of all kinds, pedestrians and animals, and as a right of way for water, gas, oil and sewer pipe lines and for telephone, electric light and power lines, together with the necessary poles or underground conduits to carry said lines over, under and across the following parcel of land: Beginning at a point in the northerly boundary of the "Schmidt" 25 acre parcel (7860R 106) as referred to in Parcel Four above, said point being south 20° 56' west, 50 feet from the most northerly point thereof; thence north 69° 04' west, 56.05 feet; thence north 27° 10' west, 215.19 feet; thence on a curve to the right having a radius of 215 feet and tangent to the last mentioned line, an arc distance of 122.58 feet to a point from which the center of said curve bears south 84° 30' east; thence on a curve to the left, having a radius of 100 feet and tangent to last mentioned curve, an arc distance of 103.56 feet to a point from which the center of said curve bears south 36° 10' west; thence along a curve to the right, having a radius of 200 feet and tangent to last mentioned curve, an arc distance of 159.12 feet to a point from which the center of said curve bears north 81° 45' east; thence along a curve to the left having a radius of 590 feet and a radial bearing of south 81° 45' west, northerly an arc distance of 416.19 feet to a point from which the center of said curve bears south 41° 20' west; thence along a curve to the right, having a radius of 445 feet and tangent to last mentioned curve, an arc distance of 129.45 feet to a point from which the center of said curve bears north 58° east; thence tangent to the last mentioned curve north 32° west, 217.10 feet; thence north 63° 17' east, 50.22 feet; thence south 32° east, 212.48 feet; thence along a curve to the left having a radius of 395 feet, and tangent to last mentioned line, an arc distance of 114.90 feet to a point from which the center of said curve bears north 41° 20' east; thence along a curve to the right, having a radius of 640 feet and tangent to last mentioned curve, an arc distance of 451.46 feet to a point from which the center of said curve bears south 81° 45' west; thence along a curve to the left, having a radius bearing of north 81° 45' east and a radius of 150 feet southerly, an arc distance of 119.34 feet; to a point from which the center of said curve bears north 36° 10' east; thence along a curve to the right, having a radius of 150 feet and tangent to last mentioned curve, an arc distance of 155.33 feet to a point from which the center of said curve bears north 84° 30' west; thence on a curve to the left having a radius of 165 feet and tangent to last mentioned curve an arc distance of 94.07 feet; thence tangent to the last mentioned curve south 27° 10' east, 180 feet to a point on the northerly line of the right of way described in Parcel Four above; thence southerly on a curve to the right having a radial bearing of south 56° 42' east and a radius of 50 feet, an arc distance of 89.34 feet to the point of beginning.

EXCEPTING FROM PARCEL FIVE: That portion thereof lying within Parcel One.

ALSO EXCEPTING FROM PARCEL FIVE: That portion thereof lying within Parcels "A" and "B" shown on the Record of Survey M.S. No. 2-65, filed March 24, 1965 in Book 33 of Licensed Surveyor's Maps, at page 33, Contra Costa County Records.

AP NO: 230-040-011

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Contra Costa }

On March 28, 2008 (Date) before me, Patti L VanHorn, Notary Public (Here Insert Name and Title of the Officer)

personally appeared William J Schlinkert, Margaret A. Schlinkert (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Patti L VanHorn (Signature of Notary Public)

PATTI L. VAN HORN
Commission # 1771380
Notary Public - California
Contra Costa County
My Comm. Expires Oct 30, 2011

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Agreement For Installation and Maintenance of Existing and New Landscaping

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

©2007 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-2402 • www.NationalNotary.org Item #5907 Reorder: Call Toll-Free 1-800-876-6827